

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL 2724
16-MD-2724

THIS DOCUMENT RELATES TO:

HON. CYNTHIA M. RUFE

Connecticut et al. v. Teva Pharmaceuticals USA, Inc. et al, no. 19-cv-2407

1199SEIU Nat’l Benefit Fund et al. v. Actavis Holdco U.S., Inc. et al., No. 16-CB-27242

American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan et al. v. Mylan Inc. et al., No. 16-CM-27242

American Federation of State, County and Municipal Employees District Council 37 Health & Security Plan et al. v. Apotex Corp. et al., 16-PV-27242

**NOTICE OF FILING OF PROPOSED SCHEDULE FOR THE END-PAYER PLAINTIFF
AND STATE ATTORNEYS GENERAL BELLWETHER CASES**

Pursuant to the Pretrial Order No. 132 [MDL Doc. 1443] and the Court’s August 31, 2020 Order [MDL Doc. 1495], the End-Payer Plaintiffs (“EPPs”) and the State Attorneys General (“States”) hereby submit their proposal to govern the schedules for the discovery, motions, and other proceedings to bring to trial on parallel tracks (1) the End-Payer Plaintiffs’ (“EPPs”) class-action complaints as to clobetasol, clomipramine, and pravastatin, and (2) the State Plaintiffs’ Amended Complaint filed November 1, 2019 (the Teva-centric Complaint) (collectively, the “Bellwether Cases”). *See* Exhibit 1 hereto.

After meeting and conferring in good faith, the interested parties were unable to reach agreement on appropriate schedules. By separate submission, Defendants, DPPs and the EPPs/States have submitted a joint stipulation proposing that briefs be submitted on September 8, 2020 to address the disputed issues.

First, each of the parties will brief their competing schedules. EPPs and the States will explain why their proposal is superior to the Defendants' and DPPs' proposed schedules and that it should be adopted for all bellwether cases, including the DPP cases, except that the DPP class-certification proceedings should begin and end 30 days before the EPP class certification proceedings outlined in the attached Exhibit 1.

Second, each of the parties will brief whether the Court should limit depositions in a way that undermines the prioritization of bellwether cases. All bellwether parties disagree as to whether fact witnesses who have testimony relevant to the bellwethers must be deposed on all relevant testimony (*i.e.* on bellwether and non-bellwether claims) during the bellwether deposition period. All bellwether plaintiffs (EPPs, States and DPPs) agree that the deadlines in their proposals will not be possible if plaintiffs are limited to a single deposition of a witness who may have testimony relevant to both bellwether and non-bellwether cases. Rather, if such a limitation is imposed, all proposed deadlines must be extended by at least 4-6 months, and possibly more.

Finally, EPPs and the States would like to highlight for the Court that their proposal assumes that Defendants will produce transaction data according to the agreed schedule set forth in the Joint Stipulation to Extend Certain Pretrial Discovery Deadlines, submitted to the Court on August 21, 2020. With limited exceptions, that Joint Stipulation provides that Bellwether defendants' data relating to bellwether drugs, formulations, and strengths will be substantially

produced by September 30, 2020, and fully produced by October 16, 2020. If Defendants' bellwether data ultimately is not produced by these deadlines, EPPs' and the States' deadlines proposed in Exhibit 1 will not be possible and will need to be modified.

Dated: September 1, 2020

Respectfully submitted,

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EXHIBIT 1

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**PRETRIAL ORDER NO. []
(CASE MANAGEMENT ORDER SCHEDULING DISCOVERY, MOTIONS,
AND OTHER PROCEEDINGS TO BRING EPP AND STATE PLAINTIFF
BELLWETHER CASES TO TRIAL)**

AND NOW, this ____ day of _____, 2020, upon consideration of the parties' schedules for the discovery, motions, and other proceedings to bring to trial on parallel tracks (1) the End-Payer Plaintiffs' ("EPPs") class-action complaints as to clobetasol, clomipramine, and pravastatin, and (2) the State Plaintiffs' Amended Complaint filed November 1, 2019 (the Teva-centric Complaint) (the "Bellwether Cases"), it is hereby **ORDERED** that the following schedule will govern the Bellwether Cases. These deadlines, and all additional deadlines, are listed in Exhibit A.

A. Fact Discovery Deadlines

The following deadlines shall govern key fact discovery deadlines in all the EPP and State Bellwether Cases.

Event	EPPs	State Plaintiffs
Defendants to use their best efforts to substantially complete production of Tier 1 custodial documents pursuant to PTO 123.	September 1, 2020	<i>Same</i>
Defendants in all Bellwether Cases to complete production of transaction-level sales data and cost information for all bellwether drugs. ¹	September 30, 2020 (substantial completion); October 16, 2020 (completion). See August 21, 2020 Joint Stipulation to Extend Certain Pretrial Discovery Deadlines (noting limited exceptions)	<i>Same</i>
Defendants to substantially complete production of all custodial documents pursuant to PTO 123.	November 16, 2020	<i>Same</i>
Depositions relevant to any Bellwether Cases begin. ²	November 30, 2020	<i>Same</i>
State Plaintiffs to substantially complete document production.	<i>Not applicable</i>	March 1, 2021
Depositions relevant to any Bellwether Cases conclude.	April 25, 2022	<i>Same</i>

¹ All deadlines beginning in section B and continuing throughout this schedule will not be possible, and will need to be adjusted, if bellwether transaction-level sales data and cost information is not produced by these dates.

² All deadlines in sections B, C, D and E and will not be possible, and will need to be adjusted, if Plaintiffs are limited to deposing bellwether witnesses only once. In addition, such deadlines may need to be modified if the limited stay of depositions under PTO 136 (or subsequent modifications thereof) becomes an obstacle to prioritizing bellwether depositions.

B. Class Certification Deadlines

The following deadlines shall govern key events related to class certification in the EPP cases:³

Event	EPPs	State Plaintiffs⁴
Plaintiffs' motions for class certification in Bellwether Cases, and expert reports on which they rely for class certification.	September 2, 2021	<i>Not applicable</i>
Depositions of Plaintiffs' class certification experts conclude. ⁵	November 17, 2021	<i>Not applicable</i>
Defendants' oppositions to class certification, Defendants' <i>Daubert</i> motions, and expert reports on which Defendants rely in opposition.	December 1, 2021	<i>Not applicable</i>
Depositions of Defendants' class certification experts conclude.	February 15, 2022	<i>Not applicable</i>
Plaintiffs' replies in support of class certification, Plaintiffs' <i>Daubert</i> motions, Plaintiffs' oppositions to Defendants' <i>Daubert</i> motions, and Plaintiffs' rebuttal expert reports.	March 1, 2022	<i>Not applicable</i>
Defendants' oppositions to Plaintiffs' <i>Daubert</i> motions.	March 15, 2022	<i>Not applicable</i>
Depositions of any new rebuttal experts conclude.	March 31, 2022	<i>Not applicable</i>
Hearing on class certification.	To be determined by the Court.	<i>Not applicable</i>

³ Deadlines relating to DPPs' class certification motion shall be 30 days before EPPs' class certification deadlines, and the other DPP deadlines shall be the same as those listed herein for EPPs.

⁴ The State Plaintiffs have not brought claims under Federal Rule of Civil Procedure 23 and therefore no class certification deadlines apply to them.

⁵ Each expert described in this bellwether schedule may be deposed only once absent good cause.

Event	EPPs	State Plaintiffs⁴
Deadline for submitting a notice plan and any related requests under Fed. R. Civ. P. 23(d)	Within 30 days of any Order granting class certification under Fed. R. Civ. P. 23(a)-(b), or at such other time as the Court may Order. ⁶	<i>Not applicable</i>

C. Merits Experts Deadlines

The below deadlines shall govern the following key events related to Merit Experts in the EPP and States' Bellwether Cases:

Event	EPPs	State Plaintiffs
Plaintiffs to serve merits expert reports.	May 2, 2022	<i>Same</i>
Depositions of Plaintiffs' merits experts conclude.	June 20, 2022	<i>Same</i>
Defendants to serve merits expert reports.	June 30, 2022	<i>Same</i>
Depositions of Defendants' merits experts conclude.	August 22, 2022	<i>Same</i>
Plaintiffs to serve rebuttal expert reports.	August 31, 2022	<i>Same</i>

⁶ In connection with a proposed settlement class or classes to be certified under Fed. R. Civ. P. 23(e), a notice plan and any related requests under Fed. R. Civ. P. 23(d) shall be submitted with the preliminary approval motion, or at such other time as the Court may Order.

D. Deadlines for Motions to Bring Cases to Trial

The below deadlines shall govern the following key events related to dispositive motions in the EPP and States Bellwether Cases:

Event	EPPs	State Plaintiffs
Defendants file any motions to dismiss bellwether complaints against EPPs ⁷ and States.	October 15, 2020	October 15, 2020
EPPs and States file oppositions to any motions to dismiss.	October 29, 2020	November 13, 2020
Defendants' reply briefs in support of motions to dismiss.	November 13, 2020	November 30, 2020
Parties may file motions and supporting briefs for summary judgment.	September 30, 2022	September 30, 2022 or earlier
Oppositions to any motions for summary judgment to be filed.	November 30, 2022	November 30, 2022, or within 60 days of the motion
Replies in support of any motions for summary judgment to be filed.	December 30, 2022	December 30, 2022, or within 30 days of the opposition

E. Bellwether Trials

Trial shall proceed on the following schedule for the EPP and State Bellwether Cases:

Event	EPPs	State Plaintiffs
Pretrial Planning Conference on <i>Lexecon</i> and trial logistics.	<i>Not applicable</i>	December 1, 2021
Pretrial planning conference to develop procedures and deadlines for all pretrial matters, such as motions <i>in limine</i> , exchanges of witness and exhibit lists, jury instructions, <i>voir dire</i> , and trial procedures.	January 16, 2023	January 16, 2023

⁷ Any motions to dismiss the EPP bellwether complaints shall be limited to the Maryland and Connecticut state law claims added by amendment on April 1, 2019. *See* PTO 79 ¶¶ 1, 3.

Dated: September ___, 2020

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.

**EXHIBIT A – SEQUENTIAL SCHEDULE OF EVENTS FOR THE STATE
PLAINTIFFS, EPP CLOBETASOL, EPP CLOMIPRAMINE
AND EPP PRAVASTATIN BELLWETHER CASES**

Date	Event
September 1, 2020	Defendants to use their best efforts to substantially complete production of Tier 1 custodial documents pursuant to PTO 123.
September 30, 2020 (substantial completion); October 16, 2020 (completion)	Defendants in all Bellwether Cases to complete production of transaction-level sales data and cost information for all bellwether drugs. See August 21, 2020 Joint Stipulation to Extend Certain Pretrial Discovery Deadlines (noting limited exceptions).
October 15, 2020	Defendants file any motions to dismiss bellwether complaints against EPPs and State Plaintiffs.
October 29, 2020	EPPs file oppositions to any motions to dismiss.
November 13, 2020	State Plaintiffs file oppositions to any motions to dismiss.
November 13, 2020	Defendants' reply briefs in support of motions to dismiss EPP actions.
November 16, 2020	Defendants to substantially complete production of all custodial documents pursuant to PTO 123.
November 30, 2020	Defendants' reply briefs in support of motions to dismiss State Plaintiffs' action.
November 30, 2020	Depositions relevant to any Bellwether Cases begin.
March 1, 2021	State Plaintiffs to substantially complete document production.
September 2, 2021	EPPs' motions for class certification in Bellwether Cases, and expert reports on which they rely for class certification.
November 17, 2021	Depositions of EPPs' class certification experts conclude.
December 1, 2021	Defendants' oppositions to EPPs' class certification; Defendants' <i>Daubert</i> motions, and expert reports on which Defendants rely in opposition.
December 1, 2021	Pretrial Planning Conference on <i>Lexecon</i> and trial logistics (State Plaintiffs' action).

Date	Event
February 15, 2022	EPPs' depositions of Defendants' class certification experts conclude.
March 1, 2022	EPPs' replies in support of class certification, <i>Daubert</i> motions, oppositions to Defendants' <i>Daubert</i> motions, and rebuttal expert reports.
March 15, 2022	Defendants' oppositions to EPPs' <i>Daubert</i> motions.
March 31, 2022	Depositions of any new rebuttal experts conclude.
To be determined by the Court	Hearing on class certification.
Within 30 days of any Order granting class certification under Fed. R. Civ. P. 23(a)-(b), or at such other time as the Court may Order.	Deadline for submitting a notice plan and any related requests under Fed. R. Civ. P. 23(d).
April 25, 2022	Depositions relevant to any Bellwether Cases conclude.
May 2, 2022	EPPs and State Plaintiffs to serve merits expert reports.
June 20, 2022	Depositions of EPPs' and State Plaintiffs' merits experts conclude.
June 30, 2022	Defendants to serve merits expert reports in EPP and State Plaintiffs' actions.
August 22, 2022	Depositions of Defendants' merits experts conclude.
August 31, 2022	EPPs and State Plaintiffs to serve rebuttal expert reports.
September 30, 2022	Parties may file motions and supporting briefs for summary judgment in EPP and State Plaintiffs' actions (or earlier in the State action).
November 30, 2022	Oppositions to any motions for summary judgment to be filed in EPPs' and State Plaintiffs' actions (or earlier in the State action).
December 30, 2022	Replies in support of any motions for summary judgment to be filed in EPPs' and State Plaintiffs' actions (or earlier in the State action).

Date	Event
January 16, 2023	Pretrial planning conference to develop procedures and deadlines for EPP and State Plaintiffs pretrial matters, such as motions <i>in limine</i> , exchanges of witness and exhibit lists, jury instructions, <i>voir dire</i> , and trial procedures.